

Proposal made by AFSCME Local 101 & IFPTE Local 21 to the City of San Jose

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Originally Submitted on: 04/08/2021 @ ____2:00pm____

Revised on:

UNION PROPOSAL # 1 - ARTICLE 2 PERIOD OF MEMORANDUM OF AGREEMENT

This Agreement shall become effective **July 1, 2021**, except where otherwise provided, and shall remain in effect through the 30th day of **June 2023**. No amendment or change to the provisions of this Agreement shall be valid or binding unless reduced to writing and signed by duly authorized representative(s) of the parties.

This contract expires on **June 30, 2023**. It is mutually agreed that the first meeting of the parties will be held no later than fifteen (15) calendar days after the City or Association receives notice from the other, which may be any date after January 1 of the year in which the current contract terminates.

UNION PROPOSAL #2 - ARTICLE 10 WAGES AND SPECIAL PAY

12.1.1 Effective July 1, 2021, all salary ranges for employees holding positions in classifications assigned to MEF/AEA/AMSP/CAMP shall be increased by five percent (5%)

12.1.1.1 Effective July 1, 2022, all salary ranges for employees holding positions in classifications assigned to MEF/AEA/AMSP/CAMP shall be increased by five percent (5%)

During the term of this agreement, should any other bargaining unit in the City receive any wage or benefit enhancements that exceed those contained in this agreement, the MEF and IFPTE represented bargaining units shall receive such wages or benefits retroactive to the date of such wages or benefits went into effect. It is understood that wage enhancements are not limited to wage increases but also bonuses, stipends, special pay and other similar monies. Benefits are defined as medical, dental, vision care, life insurance, long term disability insurance, and accidental death and dismemberment insurance.

*Placeholder for Unions individual classification proposals.

UNION PROPOSAL #3 – WORKING FROM HOME & ESSENTIAL WORKER STIPENDS

Side Letters:

Working from Home:

The City of San Jose will provide \$1000 stipend to all eligible CAMP/AMSP/AEA/MEF represented city employees according to the eligibility of the “Work from Home—Stipend Guidelines” approved in 2020. All City of San Jose and MEF/CAMP/AMSP/AEA bargaining unit employees at the time

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of the approval of this MOU, will be eligible. This will be paid within the pay period closest to ratification of the agreement.

Essential Worker Stipend:

The City of San Jose will provide a \$1000 bonus for all AMSP/AEA/CAMP/MEF employees who were designated as "essential" workers who were unable to work remotely 50+1% of the time. This will be paid within the pay period closest to ratification of the agreement.

UNION PROPOSAL #4 - PARENTAL LEAVE & STATE DISABILITY INSURANCE (SDI)

1) Paid Parental Leave:

A full-time employee shall be granted one hundred and sixty (160) hours of leave with pay at the employee's straight-time rate when they become a parent upon:

A. the birth of a child

B. a child beginning residence with an employee who has commenced adoption proceedings.

C. placement of a foster child

In addition, a parent may use one hundred and sixty (160) hours of sick leave when any of the three circumstances immediately above occur. Any leave granted under this provision shall run concurrently with FMLA/CFRA leave and must be used within the first twelve (12) months of birth, beginning adoptive residence, or foster placement with the employee. An employee will not be eligible for more than one hundred and sixty (160) hours of Parental Leave in any rolling twelve (12) month period, regardless of whether more than one birth, adoption, or foster care placement occurs in any such period.

2) State Disability Insurance (Paid Family Leave):

In 2021, the City shall enroll all workers of the AFSCME and IFPTE represented units in The California State Disability Insurance (SDI) program. SDI shall provide short-term Disability Insurance (DI) and Paid Family Leave (PFL) wage replacement benefits to eligible workers who are unable to work due to a non-work-related illness, injury, or pregnancy, to care for a seriously ill family member, bond with a new child or participate in a qualifying event because of a family member's military deployment to a foreign country.

UNION PROPOSAL #5 – USE OF CONTRACTORS

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ARTICLE 19.1 CONTRACTING OUT (CAMP/AEA/AMSP) and,
ARTICLE 23.1 CONTRACTING OUT (MEF)

The City agrees to meet and confer with the Union prior to not contract out work currently performed by bargaining unit members whenever such contracting out would result in material reduction of work done by bargaining unit members or would have significant adverse impact on bargaining unit work. It is agreed that position reductions, which result in lay-off of employees in the bargaining unit constitute significant impact on bargaining unit work. Upon request by the Union, the City shall make available for inspection any and all pertinent background and/or documentation relating to the service contemplated to be contracted out such as workforce management documents, cost benefit analysis and names / dates of persons contacted that can confirm lack of resources, lack of specialty expertise or limited duration of the requested contract. The City shall not subcontract bargaining unit work when represented classifications are able to provide the service(s) or be trained to provide the services within one-hundred-twenty (120) days.

UNION PROPOSAL #6: TELECOMMUTING AND WORKING FROM HOME

ARTICLE 10

The City of San Jose will meet and confer with AEA/CAMP/AMSP/MEF over the eligibility of those employees in classifications and worksites who can remain eligible for permanent work from home/telecommuting status. The meet and confer will only be limited to those employees who will be eligible based on work duties practicality to telecommute on a regular basis. The meet and confer will take place within 30 days of ratification of this agreement and aim to conclude within 90 days.

The City of San Jose will allow a permanent work from home policy for those eligible employees, which will be chosen by mutual agreement between the department and employee.

Departments cannot deny the request of the employee to telecommute for an arbitrary or capricious reason, but only an established "business need" to the employee and/or their Union Representative. In the event there is an established business need for an employee to report to work in-person part-time or for select functions, Departments will define these days/activities and provide telecommuting opportunities at days/times the employee is not required to report in-person.

No bargaining unit positions, vacant or filled, eligible for this telecommuting policy can be contracted out, subcontracted, or performed by a third, non-bargaining unit party.

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UNION PROPOSAL #7 – REALLOCATION PROCESS

ARTICLE (New)

The Director of Human Resources will review any reallocation requests on a case by case provided that such request is made directly by the employee, Department Director or MEF/AEA/AMSP/CAMP.

The Director of Human Resources will analyze relevant job information and approve or deny the request to review the reallocation request. If the review request is approved, the Department may then submit the Position Reallocation Request Form to Human Resources for processing. Approval to review a position reallocation request does not guarantee approval of the request itself. If a position reallocation request is denied, the Union may appeal the decision to the Civil Service Commission whose decision shall be final.

UNION PROPOSAL #8 – RETURN TO WORK SAFELY AND VACCINATION INCENTIVE

Side Letter:

Written notice of any ordinance, rule, regulation, or resolution relating to matters within the scope of “returning to work” from COVID-19 shelter-in-place order(s) to be adopted by the State, County or City or otherwise implemented shall be given to the Union fifteen (15) days prior to such action to solicit Union response and to afford an opportunity to meet and confer with the City regarding the issue. In the case of an emergency, or when the fifteen (15) day notice is not possible, the City shall provide such notice as soon as possible and an opportunity to meet at the earliest practical time to discuss the issue.

Side Letter:

In order to continue to foster healthy working environments and be community leaders in the fight against COVID-19, the City shall provide every city employee willing to provide proof of full vaccination, eight (8) hours added to their leave balance for use within the year of 2021. Employees who were willing to get vaccinated but unable due to medical reasons (verified by a physicians notice) shall also receive the eight (8) hours added to their leave balance.

UNION PROPOSAL #9 – BINDING ARBITRATION FOR DISCIPLINARY APPEALS

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ARTICLE 17 DISCIPLINARY ACTION (CAMP and AMSP)

ARTICLE 19 for MEF

(CAMP & AMSP) 17.2 ~~The appeal process for any disciplinary action shall only be those described in the San Jose Municipal Code and City Policy Manual, Section 2.1.3.~~ The appeal process for any disciplinary action will follow the process outlined in the MOU Article 21.

(MEF) 19.4 Police Department Employees. Disciplinary actions and internal investigations involving non-sworn employees who are subject to the Police Department Duty Manual will be administered in accordance with section C1811 of the Duty Manual and the Police Department Discipline Procedures Handbook for Employee Relations Liaisons. Appeals may be processed following the process outlined in MOU Article 21.

19.5 ~~No provisions of this Article shall be subject to the grievance procedures of this Agreement.~~ The appeal process for any disciplinary action shall only be those described in the ~~San Jose Municipal Code and City of San Jose Discipline Policy in the City Policy Manual and are not subject to appeal through the~~ grievance procedure of this Agreement outlined in Article 21.

Article 21 Grievance Procedure

21.1 Any dispute between the City and an employee, or, where provided, the appropriate representative of the Union, regarding the interpretation or application of the written Memorandum of Agreement, or the interpretation or application of the Employer/Employee Resolution No. 39367, as amended, shall be considered a grievance. A grievance may be initiated only by the employee directly affected except as otherwise provided herein. Where the dispute directly affects a significantly large group of employees in the representation unit, the Union representative may file a grievance on behalf of such employee(s).

1. Grievances involving the interpretation or application of Resolution No. 39367, as amended, shall be filed in writing with the Municipal Employee Relations Officer and shall be processed in accordance with applicable provisions of the Resolution.

21.3 Grievances involving the interpretation or application of this Agreement shall be processed in accordance with the procedures set forth in this Article.

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21.3.1 STEP I

21.3.1.1 An employee may present the grievance orally either directly or through the Union representative to the immediate supervisor. The grievance must be presented within ten (10) working days following the event or events on which the grievance is based. The immediate supervisor shall make whatever investigation is necessary to obtain the facts pertaining to the grievance. Within ten (10) working days after receiving the oral grievance, the immediate supervisor shall give the employee an oral reply.

21.3.1.2 If the employee is not satisfied with the reply of his/her immediate supervisor, he/she may appeal the grievance to Step II.

21.3.2 STEP II

21.3.2.1 If the employee desires to appeal the grievance to Step II, the grievance shall be reduced to writing and presented to the Department Director or his/her designated representative, within five (5) working days following the receipt of the immediate supervisor's oral reply.

21.3.2.2 To ensure clear communication and assist in resolving the grievance, the written grievance shall contain the following information:

- A clear statement of the problem
- The alleged facts upon which the grievance is based
- The section of the MOA claimed to have been violated and the specific violation claimed
- The remedy requested by the grievant
- The grievance shall be signed and dated by the employee

21.3.2.3 The Department Director, or his/her designated representative, may arrange a meeting between himself/herself, the employee, the appropriate Union representative, and the immediate supervisor to attempt to resolve the grievance. In any event the Department Director, or his/her designated representative, shall give a written decision to the employee within ten (10) working days following receipt of the written appeal to Step II.

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21.3.2.4 If the employee is not satisfied with the decision, he/she may appeal the grievance to Step III.

21.3.3 STEP III

21.3.3.1 If the employee desires to appeal the grievance to Step III, the employee shall indicate in writing the reason for the appeal and present it along with the original written grievance to the Municipal Employee Relations Officer, or his/her designee, within five (5) working days following receipt of the written decision at Step II.

21.3.3.2 Within fifteen (15) working days after receipt of the appeal to Step III, the Municipal Employee Relations Officer, or his/her designee, shall hold a meeting with the employee, the appropriate Union representative, and the Department Director or his/her designated representative to discuss the matter. A written decision shall be given to the employee or the appropriate Union representative within ten (10) working days following the meeting.

21.3.3.3 If the decision of the Municipal Employee Relations Officer, or his/her designee, is unsatisfactory, the appropriate Union representative may appeal the grievance to Step IV-Arbitration.

21.3.4 STEP IV - ARBITRATION

21.3.4.1 If the grievance has been properly processed through the previous steps of the procedure and is not resolved, the appropriate Union representative may appeal the grievance to Arbitration. The appropriate Union representative shall notify the Municipal Employee Relations Officer, or his/her designee in writing, within ten (10) working days following receipt by the employee of the written answer at Step III.

21.3.4.2 Within fourteen (14) working days following the receipt of the notice of appeal to Step IV, a meeting shall be arranged by the Municipal Employee Relations Officer, or his/her designee, with the appropriate Union representative to prepare a joint statement of the issue, or issues, to be presented to the arbitrator. The employee may also be permitted to attend. If the parties are unable to agree upon the issue or issues, each party will prepare its statement of the issue, or issues, and jointly submit the separate statement of issue, or issues, to the arbitrator. At the beginning of the hearing referred to herein, the arbitrator shall determine what the issue, or issues, is.

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21.3.4.3 The parties may mutually agree upon the selection of the arbitrator or shall jointly request the State of California Mediation and Conciliation Service to provide a list of seven (7) persons qualified to act as arbitrators. Any costs associated with the mutually agreed upon joint request for a list of persons qualified to act as arbitrators from the State of California Mediation and Conciliation Service shall be divided equally between the parties. The City will process the joint request after receiving the Union's share of the cost for obtaining the list.

21.3.4.4 Within ten (10) working days following receipt of the above referenced list, the parties shall complete the arbitration selection process. The right to strike the first name shall be determined by lot and the parties shall alternately strike one name from the list until only one (1) name remains, and that person shall be the arbitrator.

21.3.4.5 The parties shall hold a discussion at least ten (10) working days prior to the arbitration hearing date to narrow issues for arbitration, determine possible stipulations and exchange documents intended for use at the hearing. The parties shall contact the selected arbitrator within ten (10) working days in order to schedule the arbitration hearing at the earliest mutually convenient date.

21.3.4.6 The arbitrator shall hold a hearing on the issue, or issues, submitted, or as determined by the arbitrator, if the parties have not mutually agreed upon the issue, or issues, and render a written decision and reasons for the decision as soon after the hearing as possible. The decision shall be binding on both parties, and shall be limited to the issue, or issues, involved.

21.3.4.7 The decision shall be sent to the Municipal Employee Relations Officer, or his/her designee, and to the employee or appropriate representative of the Union.

21.3.4.8 Each of the parties shall pay for the time and expenses of its representatives and witnesses through all stages of the arbitration procedure and shall contribute equally to the fee and expenses of the arbitrator. The arbitrator's fee shall be determined in advance of the hearing. Court reporter fees are also shared equally among the parties.

21.3.4.9 The parties agree that the arbitrator shall not add to, subtract from, change or modify any provision of this Agreement and shall be authorized only to apply existing provisions of this Agreement to the specific facts involved and to interpret only applicable provisions of this Agreement, except that in the event it is a dispute concerning the arbitrability of the grievance, the arbitrator shall have the authority to rule on the issue of arbitrability, to wit: Whether or not the grievance involved an interpretation of the Agreement. However, the arbitrator will have no authority to rule on the issue of whether or not the grievance is a matter that is within the scope of representation, as defined under the Meyers-Milias-Brown Act.

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21.3.5 General Provisions

21.3.5.1 Any grievance not filed or appealed within the time limits specified shall be considered settled on the basis of the last disposition given. In the event the grievance is not answered within the time limits set forth herein, either the employee, except for appeals to Step IV, or the appropriate Union representative may appeal the grievance to the next higher step within the time limits provided.

21.3.5.2 The Union agrees that it will not initiate or pursue any other avenue of redress on any matter properly within the scope of representation until the provisions of this Article, including arbitration, have been utilized.

21.3.5.3 Working days as used in this Article shall be defined as the Monday thru Friday regularly scheduled working days of the employee or appropriate Union representative filing or appealing the grievance and the regularly scheduled working days of the appropriate representative of the City responsible for replying to the grievance.

21.3.5.4 If an employee desires to file a grievance involving separation from City employment pursuant to the application of Section 8.11, Leaves of Absence, the employee shall file the grievance in writing at Step II within ten (10) calendar days following the date of separation.
21.3.5.5 The parties agree that the time limits set forth herein are of the essence of this procedure and are to be strictly complied with. Any of the time limits specified in Steps I through IV may be extended by written mutual agreement of the parties.